

1 SNELL & WILMER L.L.P.
Philip J. Graves (SBN 153441)
2 pgraves@swlaw.com
Greer N. Shaw (SBN 197960)
3 gshaw@swlaw.com
350 South Grand Avenue, Suite 2600
4 Two California Plaza
Los Angeles, California 90071
5 Telephone: (213) 929-2500
Facsimile: (213) 929-2525

6 Attorneys for Plaintiff
7 James R. Glidewell Dental Ceramics, Inc.
d/b/a Glidewell Laboratories
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION

12 JAMES R. GLIDEWELL DENTAL
CERAMICS, INC. dba GLIDEWELL
13 LABORATORIES, a California
corporation,

14 Plaintiff,

15 vs.

16 KEATING DENTAL ARTS, INC., a
17 California corporation

18 Defendant.

Case No. SACV11-01309-DOC(ANx)

**JAMES R. GLIDEWELL DENTAL
CERAMICS, INC.'S STATEMENT
OF OBJECTIONS TO EVIDENCE
SUBMITTED IN SUPPORT OF
KEATING'S MOTIONS FOR
SUMMARY JUDGMENT**

Hearing

Date: December 17, 2012

Time: 8:30 a.m.

Ctrm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013

Jury Trial: February 26, 2013

19
20 AND RELATED
21 COUNTERCLAIMS.

1 Plaintiff and counter-defendant James R. Glidewell Dental Ceramics, Inc.,
2 doing business as Glidewell Laboratories ("Glidewell") hereby objects to the
3 following evidence presented by defendant and counter-claimant Keating Dental
4 Arts, Inc. ("Keating") in support of its motions for summary judgment set for
5 hearing on December 17, 2012 before this Court:

6 I. LEGAL DISCUSSION

7 To avoid repetition, in this section we provide legal authorities regarding two
8 objections that apply broadly to Keating's evidence. In the next section we offer
9 specific objections to each of Keating's declarations and exhibits with shorthand
10 references back to the arguments in this section.

11 A. KEATING'S WEBSITE PRINTOUTS ARE INADMISSIBLE

12 Keating proffered numerous alleged printouts from various webpages in
13 support of its motions, which are attached to the declarations of Dr. David
14 Eggleston, one of Keating's experts, and David Jankowski, Keating's attorney.
15 (*See* Eggleston Decl. ¶¶ 32-92, Exs. 79-137; Jankowski Decl. ¶¶ 35-40, 44, Exs. 35-
16 40, 44). Keating points to this "evidence" as supporting, among other things, its
17 "incontrovertible facts" nos. 60-62. (Dkt. #87-1, ¶¶ 60-62) These alleged
18 webpages are inadmissible for at least four reasons. First, Eggleston and Jankowski
19 are not the proper witness to authenticate the web pages. Second, even if they
20 were, they have not laid a foundation of personal knowledge to authenticate the
21 web pages. Third, even if they had personal knowledge, their testimony fails to
22 establish the exhibits' authenticity. Finally, the website printouts are hearsay.

23 1. Eggleston And Jankowski Cannot Authenticate Third Party 24 Websites

25 Only properly authenticated exhibits are admissible in support of a summary
26 judgment motion. *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 773 (9th Cir. 2002)
27 ("We have repeatedly held that unauthenticated documents cannot be considered in
28 a motion for summary judgment."). To properly authenticate a printout from a

1 website, a person with first-hand knowledge of the accuracy of the material on the
 2 website must testify. *In re Homestore.com, Inc. Sec. Litig.*, 347 F. Supp. 2d 769,
 3 782-83 (C.D. Cal. 2004); *Internet Specialties W., Inc. v. ISPWest*, 2006 WL
 4 4568796, *1-*2 (C.D. Cal. 2006) (“To be authenticated, someone with knowledge
 5 of the accuracy of the contents of the internet print-outs must testify.”). The reason
 6 for this is that the internet is inherently unreliable: “Anyone can put anything on
 7 the internet. No website is monitored for accuracy and nothing contained therein is
 8 under oath or even subject to independent verification absent underlying
 9 documentation . . . hackers can adulterate the content on any web-site from any
 10 location at any time. For these reasons, any evidence procured off the Internet is
 11 adequate for almost nothing” *Wady v. Provident Life and Accident Ins. Co. of*
 12 *America*, 216 F. Supp. 2d. 1060, 1064. (C.D. Cal.2002).

13 In *Wady*, for example, plaintiff sued to recover insurance benefits, defendant
 14 insurer moved for summary judgment, and in plaintiff’s opposition, plaintiff relied
 15 on alleged printouts from the insurer’s website. Plaintiff attached the alleged copies
 16 to the declaration of someone unaffiliated with the company, who testified that he
 17 obtained the copies from the insurer’s website on a certain date. *Id.* at 1064. The
 18 court sustained the insurer’s objection on the basis of lack of authentication. *Id.*
 19 Citing *United States v. Jackson*, 208 F.3d 633, 638 (7th Cir.2000), the court held
 20 that, “evidence taken from the Internet lack[s] authentication where the proponent
 21 [is] unable to show that the information had been posted by the organizations to
 22 which [the declarant] attributed it.” *Id.*

23 The court in *In re Homestore.com, Inc. Sec. Litig.*, 347 F. Supp. 2d 769 (C.D.
 24 Cal. 2004) similarly sustained objections to alleged printouts of a website in the
 25 context of a summary judgment motion. There, plaintiffs brought a securities
 26 action against, inter alia, the CEO of Homestore.com, Inc. The CEO moved for
 27 summary judgment, and plaintiff opposed, relying on certain press releases printed
 28 from Homestore.com’s website. The court sustained an objection on the basis of

1 lack of authenticity because plaintiffs’ attached the printouts to the declaration of
 2 someone without personal knowledge of the contents: “Although the documents
 3 bear the URL address and date stamp, they are improperly authenticated by
 4 Plaintiffs’ declaration. Printouts from a web site do not bear the indicia of
 5 reliability demanded for other self-authenticating documents under Fed.R.Evid.
 6 902. To be authenticated, some statement or affidavit from someone with
 7 knowledge is required; for example, Homestore's web master or someone else with
 8 personal knowledge would be sufficient. The Court finds that these exhibits are not
 9 properly authenticated and are inadmissible for purposes of summary judgment.”
 10 *In re Homestore.com, Inc. Sec. Litig.*, 347 F. Supp. 2d 769, 782-83 (C.D. Cal.
 11 2004); *see also Internet Specialties W., Inc. v. ISPWest*, 2006 WL 4568796, *1-*2
 12 (C.D. Cal. 2006) (excluding at trial printouts of a third-party website, and holding
 13 that a person cannot authenticate a website printout by visiting the website and
 14 printing a copy, but instead the print-outs must be authenticated by “someone with
 15 knowledge of the accuracy of the contents of the internet print-outs . . .”); *Costa v.*
 16 *Keppel Singmarine Dockyard PTE, Ltd.*, 2003 WL 24242419 *7 n.74 (C.D. Cal.
 17 2003) (sustaining an objection to printout from Keppel Corporation’s website
 18 because “[the proponent] [did] not proffer the testimony of a Keppel Corporation
 19 representative attesting that the information on the website was placed there by the
 20 corporation . . .”).

21 Here, neither Dr. Eggleston nor Jankowski purport to be affiliated with any
 22 of the companies whose websites are proffered into evidence. (*See* Eggleston Decl.
 23 ¶¶ 32-92, Exs. 79-137; Jankowski Decl. ¶¶ 35-40, 44, Exs. 35-40, 44).
 24 Accordingly, Keating has failed to authenticate the alleged website printouts and
 25 they should be excluded – and not considered for summary judgment purposes – for
 26 that reason.

1 **2. Even If Dr. Eggleston And Jankowski Could Authenticate The**
 2 **Alleged Website Printouts, They Have Not Established A**
 3 **Foundation Of Personal Knowledge As To The Contents Of The**
 4 **Website**

5 Even if Dr. Eggleston and Jankowski could authenticate the alleged website
 6 printouts, they have not established a foundation of personal knowledge to do so.
 7 Importantly, Dr. Eggleston and Jankowski *do not even claim that they have visited*
 8 *the websites they purport to authenticate*. They offer zero evidence of personal
 9 knowledge of the contents of any of the websites. So while they purport to attach
 10 “true and accurate” copies of the websites, they have provided no foundation from
 11 which they could make that claim.

12 **3. Even If Dr. Eggleston And Jankowski Could Authenticate The**
 13 **Alleged Website Printouts And Establish A Foundation For Doing**
 14 **So, They Have Not Properly Authenticated The Alleged Website**
 15 **Printouts**

16 Dr. Eggleston and Jankowski have not properly authenticated the website
 17 printouts because they have not testified as to *when* the alleged printouts of the
 18 websites were made. Websites are, by their nature, shifting targets. For that
 19 reason, it is standard practice when citing to a website to list the date last accessed.
 20 *See* The Bluebook: A Uniform System of Citation (Columbia Law Review Ass’n et
 21 al. eds., 19th ed. 2010), Rule 18.2.2 (“When material is otherwise undated, the date
 22 that the website was last visited should be placed in a parenthetical after the
 23 URL.”). And as discussed in Glidewell's brief in support of its motion for partial
 24 summary judgment as to Keating's invalidity defense and counterclaims (Dkt. #82-
 25 1), as well as in Glidewell's brief in opposition to Keating's motion for summary
 26 judgment of cancellation of Glidewell's trademark (filed concurrently herewith), the
 27 date of the evidence is particularly important in this case. Since Dr. Eggleston and
 28 Jankowski provided no information about when the alleged website printouts were

1 made, the printouts have not been properly authenticated.

2 **4. The Alleged Website Printouts Are Hearsay**

3 Printouts of internet websites are inadmissible to prove the truth of the matter
4 asserted in the website. *United States v. Jackson*, 208 F.3d 633, 637 (7th Cir.)
5 (“The web postings were not statements made by declarants testifying at trial, and
6 they were being offered to prove the truth of the matter asserted. That means they
7 were hearsay.”); *Williamson v. Prince George’s County, Md.*, 2011 WL 280961 (D.
8 Md. 2011) (sustaining objection to “five printouts of internet webpages” with the
9 “glaring” deficiency that “the internet articles are unauthenticated hearsay. . . . Such
10 articles are analogous to the newspaper articles that courts in this circuit have
11 frequently recognized as hearsay.”). In *Jackson*, for example, the defendant tried to
12 submit website postings in which certain groups took credit for the crime defendant
13 was accused of. The court excluded the website postings as hearsay being offered
14 for the truth of the matter asserted.

15 Here, the website printouts Keating proffers are being offered to show the
16 purported truth of the matters contained therein. For example, Keating relies upon
17 them to prove (a) that the use of "brux" and "zir" are "widespread" in the dental
18 industry (Dkt. #87-1 at ¶ 60); (b) that third party dental labs offer "all-zirconia
19 crowns" under various marks (Dkt. #87-1 at ¶ 61); (c) that third party dental labs
20 "promote their all-zirconia crowns for use by bruxers" (Dkt. #87-1 at ¶ 62); and (d)
21 that "Glidewell [Authorized] Labs do not identify Glidewell as a source (Dkt. #87-1
22 at ¶¶ 66-67; Eggleston Decl. Exs. 136, 137; Keating’s SOF re: cancellation 65).
23 For this reason, they should be excluded as hearsay.

24 **B. MUCH OF KEATING’S EVIDENCE OF GENERICNESS IS**
25 **OBJECTIONABLE UNDER FED. R. EVID. 401, 402, AND 403**

26 Keating has submitted declarations (by dentists and a laboratory), website
27 printouts, and prescription forms to support its argument that Glidewell’s trademark
28 “BruxZir,” and the purported phonetic equivalent, “bruxer,” are generic terms for

1 zirconia crowns. The submitted statements and documents, however, do not
2 support or even relate to a determination of whether Glidewell's mark is generic.

3 "The crucial date for the determination of genericness is the date on which
4 the alleged infringer entered the market with the disputed mark or term." *Yellow*
5 *Cab Co. of Sacramento v. Yellow Cab of Elk Grove, Inc.*, 419 F.3d 925, 928 (9th
6 Cir. 2004); *Nora Beverages, Inc. v. Perrier Grp. of Am., Inc.*, 164 F.3d 736, 744
7 (2nd. Cir. 1998) (holding that the relevant date for judging genericness is the date
8 upon which Perrier, the competitor, introduced its competing product into the
9 market); *see also* 2 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair*
10 *Competition* § 12:17.50, p. 12-61 (2012) ("The Second and Ninth Circuits have
11 held that the crucial date for the determination of genericness is the date on which
12 the alleged infringer entered the market with the disputed mark or term."). Here,
13 the crucial date for a determination of genericness, is April 2011, the date Keating
14 says it began using its KDZ Bruxer mark. [Dkt #57-1 at 13:11-12; Keating Decl.,
15 ¶ 9 & Ex. F (March 31, 2011 announcement of "new KDZ product family,"
16 including KDZ Bruxer).]

17 As detailed in Glidewell's concurrently filed Memorandum of Points and
18 Authorities In Opposition To Defendant's Motion For Summary Judgment
19 Cancelling Glidewell's Trademark Registration, the declarations, website printouts,
20 and prescription forms submitted by Keating are irrelevant to the issue of whether
21 the terms "Bruxzir" or "bruxer" were generic as of April 2011. For example, the
22 dentist declarations do not substantiate that the declarants regarded these terms as
23 generic as of April 2011. (Dkt #97 at ¶¶ 8-9 (Nov. 2011, Mar. 2012, and May
24 2012); Dkt. #98 at ¶¶ 8-9 (July 2012); Dkt. #99 at ¶¶ 9-10 (Oct. 2011); Dkt. #100 at
25 ¶¶ 9-10 (Aug. 2012); Dkt. #101 at ¶¶ 8-9 (Oct. 2011); Dkt. #102 at ¶¶ 8-9, 11 (Nov.
26 2011 and May 2012); Dkt. #103 at ¶¶ 7-8 (Nov. 2011); Dkt. #104 at ¶¶ 8-9, 11
27 (May 2011); Dkt. #105 at ¶¶ 9-10 (Nov. 2011 and May 2012); Dkt. #106 at ¶¶ 8-9,
28 11 (Aug. 2012); Dkt. #107 at ¶¶ 9-10, 12 (Oct. 2011); Dkt. #108 at ¶¶ 7-8, 10 (Aug.

2012); Dkt. #109 at ¶¶ 8-9, 11 (Oct. 2012)). Similarly, many of the prescription forms either post-date April 2011 or are undated, and therefore irrelevant to establishing genericness. (Dkt. #96 at KDA-004853-61; KDA-004863; KDA-004868; KDA-004870; Dkt. #96 at KDA-004869). Likewise, many of the third-party webpages either post-date April of 2011 or are undated. (Dkt. #91-31 (Advanced Dental Lab (BruxZir), March 2012); Dkt. #91-29 (China Dental Outsourcing (Bruxer All Zirconia), May 2011); Dkt. #91-39 (China Dental Outsourcing (All Zirconia for Bruxers), September 2012); Dkt. #93-55 (Cosmetic Dentistry of SA (Bruxer Crown), September 2012); Dkt. #93-44 (Infinity Dental Lab (Bruxer Crowns), September 2012); Dkt. #91-32 (Old Dominion Milling Corp. (Bruxer), August 2012); Dkt. #91-30 & 91-38 (Showcase Dental Lab (Zir-Bruxer), January 2012); Dkt. #93-47 (York Dental Lab (Bruxer), August 2012); Dkt. #91-43 (Dani Dental (Full Zirconia (Bruxer)), undated); Dkt. #93-56 (Pittman Dental (Bruxer Crown), undated); Dkt #91-42 (Trachsel Dental (All Zirconia Bruxer), undated).

Federal Rules of Evidence 401 and 402 forbid the introduction of evidence which is not relevant. Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Fed.R.Evid. 402. Even relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue waste of time, or needless presentation of cumulative evidence. Fed.R.Evid. 403.

Much of the evidence, as more particularly identified below, submitted by Keating on the issue of genericness does not relate to the relevant time period (pre-April 2011) and is therefore irrelevant. It should be excluded under Rules 401 and 402. Admitting the evidence despite its lack of relevance would pose a high danger that the fact finder would be confused and misled into determining genericness as

of an incorrect time period. Glidewell, of course, would be highly prejudiced by irrelevant evidence that confuses and misleads the factfinder. For these additional reasons, the evidence should be excluded under Rule 403.

II. OBJECTIONS

A. Declaration of David Jankowski

Exhibit	Objection
4	This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on.
5	This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on.
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15	FRE 901. This exhibit has not been authenticated by any declaration, nor has Keating cited any deposition testimony to authenticate it.
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Exhibit	Objection
35	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B), <i>supra</i>). Further, Keating does not cite this exhibit in its motions or separate statements.</p> <p>This exhibit is hearsay because, to the extent Keating relies on it, it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A), <i>supra</i>).</p> <p>This exhibit lacks authenticity because Jankowski does not testify that he has personal knowledge of the contents of the alleged website. (<i>See</i> section I(A), <i>supra</i>).</p>
36	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B), <i>supra</i>). Further, Keating does not cite this exhibit in its motions or separate statements.</p> <p>This exhibit is hearsay because, to the extent Keating relies on it, it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A), <i>supra</i>).</p> <p>This exhibit lacks authenticity because Jankowski does not testify that he has personal knowledge of the contents of the alleged website. (<i>See</i> section I(A), <i>supra</i>).</p>
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40	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B),</p>

Exhibit	Objection
	<p><i>supra</i>). Further, Keating does not cite this exhibit in its motions or separate statements.</p> <p>This exhibit is hearsay because, to the extent Keating relies on it, it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A), <i>supra</i>).</p> <p>This exhibit lacks authenticity because Jankowski does not testify that he has personal knowledge of the contents of the alleged website. (<i>See</i> section I(A), <i>supra</i>).</p>
41	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B), <i>supra</i>). Further, Keating does not cite this exhibit in its motions or separate statements.</p> <p>This exhibit is hearsay because, to the extent Keating relies on it, it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A), <i>supra</i>).</p> <p>This exhibit lacks authenticity because Jankowski does not testify that he has personal knowledge of the contents of the alleged website. (<i>See</i> section I(A), <i>supra</i>).</p>
42	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B), <i>supra</i>).</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A), <i>supra</i>).</p> <p>This exhibit lacks authenticity because Jankowski does not testify that he</p>

Exhibit	Objection
	has personal knowledge of the contents of the alleged forms. (<i>See</i> section I(A), <i>supra</i>).
43	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B), <i>supra</i>).</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A), <i>supra</i>).</p> <p>This exhibit lacks authenticity because Jankowski does not testify that he has personal knowledge of the contents of the alleged forms. (<i>See</i> section I(A), <i>supra</i>).</p>
44	<p>FRE 401, 402, 403, 901. This document is offered by Keating to show what a trademark attorney at the PTO would have found if the attorney had done a google search (SOF 88-92), but there is no evidence that a search performed at the time of the trademark registration application in 2009 would have yielded the same or similar results to this exhibit, which is dated October 14, 2012.</p> <p>This exhibit lacks authenticity because Jankowski does not testify that he has personal knowledge of the contents of the alleged website. (<i>See</i> section I(A), <i>supra</i>).</p>
46	<p>FRE 801, 802, 901. This exhibit is hearsay as it is an out of court statement by Keating offered for the truth of the matter asserted.</p> <p>This exhibit has not been authenticated by any declaration, nor has Keating cited any deposition testimony to authenticate it.</p>
47	FRE 801, 802, 901. This exhibit is hearsay as it is an out of court statement by Keating offered for the truth of the matter asserted.

Exhibit	Objection
	This exhibit has not been authenticated by any declaration, nor has Keating cited any deposition testimony to authenticate it.
48	FRE 801, 802, 901. This exhibit is hearsay as it is an out of court statement by Keating offered for the truth of the matter asserted. This exhibit has not been authenticated by any declaration, nor has Keating cited any deposition testimony to authenticate it.
49	FRE 801, 802, 901. This exhibit is hearsay as it is an out of court statement by Keating offered for the truth of the matter asserted. This exhibit has not been authenticated by any declaration, nor has Keating cited any deposition testimony to authenticate it.

B. Declaration of Dr. David W. Eggleston

Exhibit	Objection
66	FRE 801, 802. The attached expert report is not signed under penalty of perjury. Accordingly, it is inadmissible hearsay. <i>Harris v. Extendicare Homes, Inc.</i> , 829 F. Supp. 2d 1023, 1027 (W.D. Wash. 2011) (“[C]ourts in this circuit have routinely held that . . . unsworn expert reports are not admissible to support or oppose summary judgment.”); <i>King Tuna, Inc. v. Anova Food, Inc.</i> , 2009 WL 650732 (C.D. Cal. 2009) (“It is well-settled that under Fed.R.Civ.P. 56(e), unsworn expert reports are not admissible to support or oppose summary judgment.”).
67	FRE 801, 802. The attached expert report is not signed under penalty of perjury. Accordingly, it is inadmissible hearsay. <i>Harris v. Extendicare Homes, Inc.</i> , 829 F. Supp. 2d 1023, 1027 (W.D. Wash. 2011) (“[C]ourts in this circuit have routinely held that . . . unsworn expert reports are not admissible to support or oppose summary judgment.”); <i>King Tuna, Inc. v.</i>

Exhibit	Objection
	<i>Anova Food, Inc.</i> , 2009 WL 650732 (C.D. Cal. 2009) (“It is well-settled that under Fed.R.Civ.P. 56(e), unsworn expert reports are not admissible to support or oppose summary judgment.”).
79	FRE 901. Dr. Eggleston does not testify that he has personal knowledge of the contents of Glidewell’s advertisements. (<i>See</i> section I(A) (foundation), <i>supra</i>).
80	FRE 901. Dr. Eggleston does not testify that he has personal knowledge of the contents of Glidewell’s website. (<i>See</i> section I(A) (foundation), <i>supra</i>).
81	FRE 901. Dr. Eggleston does not testify that he has personal knowledge of the contents of Glidewell’s website. (<i>See</i> section I(A) (foundation), <i>supra</i>).
82	FRE 901. Dr. Eggleston does not testify that he has personal knowledge of the contents of Glidewell’s website. (<i>See</i> section I(A) (foundation), <i>supra</i>).
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84	FRE 901. Dr. Eggleston does not testify that he has personal knowledge of the contents of Glidewell’s website. (<i>See</i> section I(A) (foundation), <i>supra</i>).
85	FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). Further, Keating does not cite this exhibit in its motions or separate statements.

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	<p>(relevance), <i>supra</i>).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), <i>supra</i>).</p>
132	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), <i>supra</i>).</p>
133	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), <i>supra</i>).</p>
134	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), <i>supra</i>).</p>
135	FRE 401, 402, 403, 901. This document has no tendency to show how

Exhibit	Objection
	<p>the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), <i>supra</i>).</p>
136	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>).</p> <p>This exhibit is hearsay because it is an out of court statements offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), <i>supra</i>).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), <i>supra</i>).</p>
137	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>).</p> <p>This exhibit is hearsay because it is an out of court statements offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), <i>supra</i>).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), <i>supra</i>).</p>

C. Declaration of Rustin K. Magnum

Exhibit	Objection
50	This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on.
51	This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on.
52	This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on.
53	This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on.
54	This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on.
55	FRE 901. This exhibit has not been authenticated by any declaration, nor

Exhibit	Objection
	does the deposition testimony cited by Keating authenticate the exhibit. (<i>See</i> SOF 57, Doc No. 88-1).
56	FRE 901. This exhibit has not been authenticated by any declaration, nor does the deposition testimony cited by Keating authenticate the exhibit. (<i>See</i> SOF 57, Doc No. 88-1).
57	FRE 901. This exhibit has not been authenticated by any declaration, nor does the deposition testimony cited by Keating authenticate the exhibit. (<i>See</i> SOF 57, Doc No. 88-1).
58	FRE 901. This exhibit has not been authenticated by any declaration, nor does the deposition testimony cited by Keating authenticate the exhibit. (<i>See</i> SOF 57, Doc No. 88-1).
59	FRE 401, 402, 403, 802, 901. This exhibit is irrelevant and unduly prejudicial. It has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B), <i>supra</i>). This exhibit is hearsay because it is a compilation of out of court statements offered for the truth of the matter asserted. (<i>See</i> section I(A), <i>supra</i>). This exhibit lacks authenticity because Mangum does not testify that he has personal knowledge of the contents of alleged documents. (<i>See</i> section I(A), <i>supra</i>).
60	FRE 401, 402, 403, 802, 901. This exhibit is irrelevant and unduly prejudicial. It has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B), <i>supra</i>). This exhibit is hearsay because it is a compilation of out of court

Exhibit	Objection
	<p>statements offered for the truth of the matter asserted. (<i>See</i> section I(A), <i>supra</i>).</p> <p>This exhibit lacks authenticity because Mangum does not testify that he has personal knowledge of the contents of alleged documents. (<i>See</i> section I(A), <i>supra</i>).</p>
61	<p>FRE 401, 402, 403, 802, 901. This exhibit is irrelevant and unduly prejudicial. It has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B), <i>supra</i>).</p> <p>This exhibit is hearsay because it is a compilation of out of court statements offered for the truth of the matter asserted. (<i>See</i> section I(A), <i>supra</i>).</p> <p>This exhibit lacks authenticity because Mangum does not testify that he has personal knowledge of the contents of alleged documents. (<i>See</i> section I(A), <i>supra</i>).</p>
62	<p>FRE 401, 402, 403, 802, 901. This exhibit is irrelevant and unduly prejudicial. It has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B), <i>supra</i>).</p> <p>This exhibit is hearsay because it is a compilation of out of court statements offered for the truth of the matter asserted. (<i>See</i> section I(A), <i>supra</i>).</p> <p>This exhibit lacks authenticity because Mangum does not testify that he has personal knowledge of the contents of alleged documents. (<i>See</i> section I(A), <i>supra</i>).</p>
63	FRE 901. This exhibit has not been authenticated by any declaration, nor

Exhibit	Objection
	does the deposition testimony cited by Keating authenticate the exhibit. (See SOF 57, Doc No. 88-1).
64	FRE 901. This exhibit has not been authenticated by any declaration, nor does the deposition testimony cited by Keating authenticate the exhibit. (See SOF 57, Doc No. 88-1).

D. Declaration of Jeffrey Van Hoosear

Exhibit	Objection
V-4	FRE 401, 402. This document is offered to show that “bruxer” and “BruxZir” are pronounced the same (SOF 48), but in Exhibit V-4 Dr. DiTolla never pronounces the word “bruxer,” and thus the video is irrelevant for purposes of comparison.

E. Declaration of Lori Boatright

Exhibit	Objection
A	FRE 801, 802. The attached expert report is not signed under penalty of perjury. Accordingly, it is inadmissible hearsay. <i>Harris v. Extendicare Homes, Inc.</i> , 829 F. Supp. 2d 1023, 1027 (W.D. Wash. 2011) (“[C]ourts in this circuit have routinely held that . . . unsworn expert reports are not admissible to support or oppose summary judgment.”); <i>King Tuna, Inc. v. Anova Food, Inc.</i> , 2009 WL 650732 (C.D. Cal. 2009) (“It is well-settled that under Fed.R.Civ.P. 56(e), unsworn expert reports are not admissible to support or oppose summary judgment.”).

F. Objections to Declaration of Carol Frattura

Paragraph	Objection
8	FRE 401, 402, 403, 702. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when she regarded "bruxzir," "bruxer," or "bruxir" as meaning an "all-zirconia crown," and at most indicates a time reference as of the date of the prescription forms attached to her declaration as Exhibit A, which either post-date April 2011 (KDA-004853-61, KDA 004863, KDA-004868, and KDA-004870), are undated (KDA-004869), or show that dentists use terms other than "bruxzir" or "bruxer" (KDA-004862 (May 2011)("Brux Zirconia"), KDA-004864 (October 2010) ("Full Ceram Crown"), KDA-004865 (March 2011) ("zinostar"), KDA-004866 (October 2010) ("BRUX zirconia"), KDA-004867 (September 2010) ("zirconia crown"). Further, the witness's statement of what dentists could have been referring to when using the term "bruxer" is speculative.
18	FRE 401, 402, 403, 702. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness, but refer to the time period following January 2012. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness is also speculating as what others dentists mean when using the terms "bruxzir crown" and "bruxer crown."
Exhibit	
Portions of Ex. A:	FRE 401, 402, 403, 802. The attached documents do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by

1 2 3 4 5 6 7 8 9 10	KDA-004853-61, KDA 004863, KDA-004868, KDA-004869, and KDA-004870,	the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The prescription forms in Exhibit A either post-date April 2011 (KDA-004853-61, KDA 004863, KDA-004868, and KDA-004870), or are undated (KDA-004869). The attached documents are also inadmissible hearsay. FRE 801, 802; <i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).
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G. Declaration of Dr. William Belton

Paragraph	Objection
9	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he regarded "BruxZir" as meaning an "all zirconia crown, commonly used for bruxers," and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated November 2011, March 2012, and May 2012.
10	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in November 2011, March 2012, and May 2012. (<i>See</i> section I(B) (relevance), <i>supra</i>).

Exhibit	
A	<p>FRE 401, 402, 403, 802. The attached documents do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he regarded “BruxZir” as meaning an “all zirconia crown, commonly used for bruxers,” and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated November 2011, March 2012, and May 2012.</p> <p>The attached documents are also inadmissible hearsay. FRE 801, 802; <i>Orr v. Bank of America</i>, 285 F.3d 764, 778 (9th Cir. 2002).</p>

H. Declaration of Dr. Raymond Brady

Paragraph	Objection
9	<p>FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he regarded “Bruxir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated July 2012.</p>
10	<p>FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in July 2012. (<i>See</i> section I(B)</p>

1		(relevance), <i>supra</i>).
2	Exhibit	
3	A	FRE 401, 402, 403, 802. The attached document does not have any
4		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
5		the public as of April 2011, the critical date for determining
6		genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails
7		to specify when he regarded “Bruxir” as meaning a “full contour
8		zirconia crown for bruxers,” and at most indicates a time reference as
9		of the date of the prescription form attached to his declaration as
10		Exhibit A, dated July 2012.
11		The attached document is also inadmissible hearsay. FRE 801, 802;
12		<i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).

I. Declaration of Dr. Jonathan Campbell

15	Paragraph	Objection
16	10	FRE 401, 402, 403. The witness’s statements do not have any
17		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
18		the public as of April 2011, the critical date for determining
19		genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails
20		to specify when he regarded “bruxzir” as meaning a “full contour
21		zirconia crown for bruxers,” and at most indicates a time reference as
22		of the date of the prescription form attached to his declaration as
23		Exhibit A, dated October 2011.
24	11	FRE 401, 402, 403. The witness’s statements do not have any
25		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
26		the public as of April 2011, the critical date for determining
27		genericness, but refer to conduct in October 2011. (<i>See</i> section I(B)
28		

1		(relevance), <i>supra</i>).
2	12	FRE 401, 402, 403. The witness's statements do not have any
3		tendency to show how the terms "Bruxer" or "Bruxzir" were used by
4		the public as of April 2011, the critical date for determining
5		genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails
6		to specify when he began using the term "bruxzir" to "specify the
7		type of crown [he] wanted for a patient and to distinguish from other
8		types of crowns such as PFMs and full cast gold crowns."
9	Exhibit	
10	A	FRE 401, 402, 403, 802. The attached document does not have any
11		tendency to show how the terms "Bruxer" or "Bruxzir" were used by
12		the public as of April 2011, the critical date for determining
13		genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails
14		to specify when he regarded "bruxzir" as meaning a "full contour
15		zirconia crown for bruxers," and at most indicates a time reference as
16		of the date of the prescription form attached to his declaration as
17		Exhibit A, dated October 2011.
18		The attached document is also inadmissible hearsay. FRE 801, 802;
19		<i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).

J. Declaration of Dr. Michael Colleran

Paragraph	Objection
10	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he regarded "bruxzir" as meaning a "full contour

1		zirconia crown for bruxers,” and at most indicates a time reference as
2		of the date of the prescription form attached to his declaration as
3		Exhibit A, dated August 2012.
4	11	FRE 401, 402, 403. The witness’s statements do not have any
5		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
6		the public as of April 2011, the critical date for determining
7		genericness, but refer to conduct in August 2012. (<i>See</i> section I(B)
8		(relevance), <i>supra</i>).
9	12	FRE 401, 402, 403, 702. The witness’s statements do not have any
10		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
11		the public as of April 2011, the critical date for determining
12		genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails
13		to specify when “he has seen the term ‘bruxzir’ with various
14		spellings,” how he knows the use of the term “bruxir” was used “to
15		refer to an all zirconia crown,” or how he knows “they are all
16		pronounced the same.”
17	Exhibit	
18	A	FRE 401, 402, 403, 802. The attached document does not have any
19		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
20		the public as of April 2011, the critical date for determining
21		genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails
22		to specify when he regarded “bruxzir” as meaning a “full contour
23		zirconia crown for bruxers,” and at most indicates a time reference as
24		of the date of the prescription form attached to his declaration as
25		Exhibit A, dated August 2012.
26		The attached document is also inadmissible hearsay. FRE 801, 802;
27		<i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).
28		

K. Declaration of Dr. Joseph Jacquinot

Paragraph	Objection
9	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he regarded "brux-zir" as meaning an "all zirconia crown which is often used for bruxers," and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated October 2011.
10	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in October 2011. (<i>See</i> section I(B) (relevance), <i>supra</i>).
11	FRE 401, 402, 403, 702. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he began to use "'brux-zir' to specify [an all zirconia crown]" or when or how he has "heard and pronounced 'bruxzir' the same way as 'bruxer.'"
Exhibit	
A	FRE 401, 402, 403, 802. The attached documents do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails

to specify when he regarded “brux-zir” as meaning an “all zirconia crown which is often used for bruxers,” and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated October 2011.

The attached documents are also inadmissible hearsay. FRE 801, 802; *Orr v. Bank of America*, 285 F.3d 764, 778 (9th Cir. 2002).

L. Declaration of Dr. Dennis Murphy

Paragraph	Objection
9	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he regarded “bruxzir” and “bruxir” as meaning an “all zirconia crown which is often used for bruxers,” and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated November 2011 and May 2012.
10	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in November 2011 and May 2012. (<i>See</i> section I(B) (relevance), <i>supra</i>).
11	FRE 401, 402, 403, 702. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails

	to specify when he has seen “advertisements for all zirconia crowns that use the term “bruxzir,” or a similar spelling, to identify [an all zirconia] crown.” At most, the witness refers to his understanding as of November 2011 and May 2012 “when [he] submitted the orders attached in Exhibit A.”
Exhibit	
A	<p>FRE 401, 402, 403, 802. The attached documents do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he regarded “bruxzir” and “bruxir” as meaning an “all zirconia crown which is often used for bruxers,” and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated November 2011 and May 2012.</p> <p>The attached documents are also inadmissible hearsay. FRE 801, 802; <i>Orr v. Bank of America</i>, 285 F.3d 764, 778 (9th Cir. 2002).</p>

M. Declaration of Dr. Terry Myers

Paragraph	Objection
8	<p>FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he regarded “bruxzir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as</p>

1		Exhibit B, dated November 2011.
2	9	FRE 401, 402, 403. The witness's statements do not have any
3		tendency to show how the terms "Bruxer" or "Bruxzir" were used by
4		the public as of April 2011, the critical date for determining
5		genericness, but refer to conduct in November 2011. (<i>See</i> section
6		I(B) (relevance), <i>supra</i>).
7	10	FRE 401, 402, 403, 702. The witness's statements do not have any
8		tendency to show how the terms "Bruxer" or "Bruxzir" were used by
9		the public as of April 2011, the critical date for determining
10		genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails
11		to specify when he has seen advertisements for a "bruxzir" crown or
12		which dental laboratories were providing these advertisements. The
13		witness also fails to identify when he understood the term "bruxzir"
14		crown to mean "a full contour zirconia crown."
15	Exhibit	
16	B	FRE 401, 402, 403, 802. The attached document does not have any
17		tendency to show how the terms "Bruxer" or "Bruxzir" were used by
18		the public as of April 2011, the critical date for determining
19		genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails
20		to specify when he regarded "bruxzir" as meaning a "full contour
21		zirconia crown for bruxers," and at most indicates a time reference as
22		of the date of the prescription form attached to his declaration as
23		Exhibit B, dated November 2011.
24		The attached document is also inadmissible hearsay. FRE 801, 802;
25		<i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).
26		
27		
28		

N. Declaration of Dr. Thomas Nussear

Paragraph	Objection
9	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he regarded "bruxzir" as meaning a "full contour zirconia crown for bruxers," and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated May 2011.
10	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in May 2011. (<i>See</i> section I(B) (relevance), <i>supra</i>).
11	FRE 401, 402, 403, 702. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he "came to understand the terms 'bruxzir' and 'bruxer' to be synonymous" or that "each is pronounced the same" or that "both terms are commonly used to refer to all zirconia crowns which are commonly used for bruxers."
Exhibit	
A	FRE 401, 402, 403, 802. The attached document does not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining

genericness. (*See* section I(B) (relevance), *supra*). The witness fails to specify when he regarded “bruxzir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated May 2011.

The attached document is also inadmissible hearsay. FRE 801, 802; *Orr v. Bank of America*, 285 F.3d 764, 778 (9th Cir. 2002).

O. Declaration of Dr. Stan Richardson

Paragraph	Objection
10	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he regarded “bruxzir” and “bruxzer” as meaning an “all zirconia crown which is commonly used for bruxers,” and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated November 2011 and May 2012.
11	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in November 2011 and May 2012. (<i>See</i> section I(B) (relevance), <i>supra</i>).
12	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining

	genericness, but again refer to conduct in November 2011 and May 2012. (<i>See</i> section I(B) (relevance), <i>supra</i>).
Exhibit	
A	<p>FRE 401, 402, 403, 802. The attached documents do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he regarded “bruxzir” and “bruxzer” as meaning an “all zirconia crown which is commonly used for bruxers,” and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated November 2011 and May 2012.</p> <p>The attached documents are also inadmissible hearsay. FRE 801, 802; <i>Orr v. Bank of America</i>, 285 F.3d 764, 778 (9th Cir. 2002).</p>

P. Declaration of Dr. Richard Scott

Paragraph	Objection
9	<p>FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he regarded “bruxir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated August 2012.</p>
10	<p>FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by</p>

	the public as of April 2011, the critical date for determining genericness, but refer to conduct in August 2012. (<i>See</i> section I(B) (relevance), <i>supra</i>).
11	FRE 401, 402, 403, 702. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he came to the understanding that "bruxer" crown, "bruxzir" crown, and "bruxir" crown all carry the same meaning and that they are pronounced the same.
Exhibit	
A	FRE 401, 402, 403, 802. The attached document does not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he regarded "bruxir" as meaning a "full contour zirconia crown for bruxers," and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated August 2012. The attached document is also inadmissible hearsay. FRE 801, 802; <i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).

Q. Declaration of Dr. Scott Stephens

Paragraph	Objection
10	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining

1		genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails
2		to specify when he regarded “brux-zir” as meaning a “full contour
3		zirconia crown for bruxers,” and at most indicates a time reference as
4		of the date of the prescription form attached to his declaration as
5		Exhibit A, dated October 2011.
6	11	FRE 401, 402, 403. The witness’s statements do not have any
7		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
8		the public as of April 2011, the critical date for determining
9		genericness, but refer to conduct in October 2011. (<i>See</i> section I(B)
10		(relevance), <i>supra</i>).
11	12	FRE 401, 402, 403, 702. The witness’s statements do not have any
12		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
13		the public as of April 2011, the critical date for determining
14		genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails
15		to specify when he understood “bruxzir” as a reference to a crown
16		used for bruxism patients made of zirconia. The witness also does
17		not indicate when or how he knows that when he hears the term
18		“bruxzir” pronounced, it is the same as “bruxer.”
19	Exhibit	
20	A	FRE 401, 402, 403, 802. The attached document does not have any
21		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
22		the public as of April 2011, the critical date for determining
23		genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails
24		to specify when he regarded “brux-zir” as meaning a “full contour
25		zirconia crown for bruxers,” and at most indicates a time reference as
26		of the date of the prescription form attached to his declaration as
27		Exhibit A, dated October 2011.
28		

The attached document is also inadmissible hearsay. FRE 801, 802;
Orr v. Bank of America, 285 F.3d 764, 778 (9th Cir. 2002).

R. Declaration of Dr. Daniel Sweet

Paragraph	Objection
8	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he regarded "Brux-Zir" as meaning a "full contour zirconia crown which is often used for bruxers," and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated August 2012.
9	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in August 2012. (<i>See</i> section I(B) (relevance), <i>supra</i>).
10	FRE 401, 402, 403, 702. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he has seen advertising using the term "bruxzir" or from which companies he has seen these advertisements," or how he knows these advertisements are referring "generally to a full contour zirconia crown." The witness also does not specify when he came to the conclusion that "bruxzir" is the name "used to describe a full

	contour zirconia crown.”
Exhibit	
A	FRE 401, 402, 403, 802. The attached documents do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he regarded “Brux-Zir” as meaning a “full contour zirconia crown which is often used for bruxers,” and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated August 2012. The attached documents are also inadmissible hearsay. FRE 801, 802; <i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).

S. Declaration of Dr. Gary P. Tobin

Paragraph	Objection
9	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails to specify when he regarded “Bruxzir” as meaning an “all zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated August 2012.
10	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in August 2012. (<i>See</i> section I(B)

1		(relevance), <i>supra</i>).
2	11	FRE 401, 402, 403, 702. The witness's statements do not have any
3		tendency to show how the terms "Bruxer" or "Bruxzir" were used by
4		the public as of April 2011, the critical date for determining
5		genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails
6		to specify when he has seen the term "bruxzir" being used by dental
7		labs, or which labs are using the term, or how he knows the
8		advertisements are using the term to refer to "all zirconia restorations
9		for bruxers."
10	Exhibit	
11	A	FRE 401, 402, 403, 802. The attached document does not have any
12		tendency to show how the terms "Bruxer" or "Bruxzir" were used by
13		the public as of April 2011, the critical date for determining
14		genericness. (<i>See</i> section I(B) (relevance), <i>supra</i>). The witness fails
15		to specify when he regarded "Bruxzir" as meaning an "all zirconia
16		crown for bruxers," and at most indicates a time reference as of the
17		date of the prescription form attached to his declaration as Exhibit A,
18		dated August 2012.
19		The attached document is also inadmissible hearsay. FRE 801, 802;
20		<i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).

Dated: November 26, 2012

SNELL & WILMER L.L.P.

By: s/Philip J. GravesPhilip J. Graves
Greer N. ShawAttorneys for Plaintiff
James R. Glidewell Dental Ceramics, Inc. dba
Glidewell Laboratories

1 ***Glidewell Laboratories v. Keating Dental Arts, Inc.***
2 **United States District Court, Central, Case No. SACV11-01309-DOC (ANx)**

3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on November 26, 2012, I electronically filed the
5 document described as **JAMES R. GLIDEWELL DENTAL CERAMICS,**
6 **INC.'S STATEMENT OF OBJECTIONS TO EVIDENCE SUBMITTED IN**
7 **SUPPORT OF KEATING'S MOTIONS FOR SUMMARY JUDGMENT** with
8 the Clerk of the Court using the CM/ECF System which will send notification of
9 such filing to the following:

10 David G. Jankowski
11 Jeffrey L. Van Hoosear
12 Lynda J Zadra-Symes
13 Knobbe Martens Olson and Bear LLP
14 2040 Main Street, 14th Floor
15 Irvine, CA 92614

**Attorneys for Defendant Keating
Dental Arts, Inc.**
Tel: (949) 760-0404
Fax: (949) 760-9502

Jeffrey.vanhoosear@kmob.com
David.jankowski@kmob.com
Lynda.zadra-symes@kmob.com
litigation@kmob.com

16 Dated: November 26, 2012

SNELL & WILMER L.L.P.

17
18 By: s/Philip J. Graves

19 Philip J. Graves
20 Greer N. Shaw

21 Attorneys for Plaintiff
22 James R. Glidewell Dental Ceramics, Inc.
23 dba GLIDEWELL LABORATORIES
24

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27
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